

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: : Chapter 7  
Barry Portnoy, :  
Debtor. : Bankruptcy No. 14-16081-mdc

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**ORDER**

**AND NOW**, upon consideration of (1) Trustee's Objection to Debtor's Assertion of the Attorney/Client Privilege in Emails,<sup>1</sup> (2) Objection of Bonnie Finkel, Chapter 7 Trustee of the Estate of Demrex Industrial Services, Inc. to the Privilege Log of Barry Portnoy,<sup>2</sup> and (3) Objection of Bonnie Finkel, Chapter 7 Trustee of the Estate of Demrex Industrial Services, Inc. to the Revised Privilege Log of Barry Portnoy (collectively, the "Objections"),<sup>3</sup> and after hearings held thereon, and for the reasons stated on the record,<sup>4</sup> it is hereby **ORDERED** that:

(A) The Objections to the following documents on the Revised Privileged Log are  
**SUSTAINED**:

1. Document No. 25.
2. Document No. 31.
3. Document No. 32.
4. Document No. 33.
5. Document No. 41.
6. Document No. 42.

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<sup>1</sup> Bankr. Docket No. 506.

<sup>2</sup> Bankr. Docket No. 507.

<sup>3</sup> Bankr. Docket No. 512.

<sup>4</sup> The attorney-client privilege applies to corporations as well as individuals. *Upjohn Co. v. U.S.*, 449 U.S. 383, 390 (1981). As such, the corporation is the entity which can assert the privilege on behalf of itself. *Id.* Though the power to waive ultimately rests in the officers and directors of the corporation (in the case of solvent corporations) or in the trustee (in the case of insolvent corporations), they nonetheless are acting in their capacity as fiduciaries of the corporation, not as individuals. *Commodity Futures Trading Com'n v. Weintraub*, 471 U.S. 33, 348-54 (1985). Here, Debtor acted in his individual capacity, rather than as the director or principal of the corporate entities on behalf of whom he asserted the privilege. While this may ultimately result in the same privileges being asserted by the corporate entities through the Debtor-principal, the adherence to proper procedural and legal strictures has been disregarded by the parties in this matter and thus the Court must issue this ruling to ensure that such failures do not continue.

7. Document No. 45.
8. Document No. 46.
9. Document No. 52.
10. Document No. 55.
11. Document No. 56.
12. Document No. 57.
13. Document No. 58.
14. Document No. 59.
15. Document No. 60.
16. Document No. 61.
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33. Document No. 83.
34. Document No. 84.
35. Document No. 85.
36. Document No. 86.
37. Document No. 87.
38. Document No. 88.
39. Document No. 89.
40. Document No. 90.
41. Document No. 91.
42. Document No. 92.

- 43. Document No. 93.
- 44. Document No. 94.
- 45. Document No. 95.
- 46. Document No. 96.
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- 49. Document No. 99.
- 50. Document No. 100.
- 51. Document No. 101.
- 52. Document No. 102.
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- 86. Document No. 142.
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178. Document No. 248.
179. Document No. 249.
180. Document No. 250.
181. Document No. 251.
182. Document No. 252.
183. Document No. 253.

(B) Any person objecting to the production of any of the documents set forth at Numbers 1 to 183 above (the “Disallowed Entries”) shall file with the Court an objection setting forth the basis for each

such objection (“Objection to Production of Disallowed Entries”) on or before **January 31, 2018 by 5:00 p.m.**

(C) Any objection to the Objection to Production of Disallowed Entries (the “Disallowed Entries Objection”) shall be filed on or before **February 8, 2018 at 5:00 p.m.**

(D) A hearing on the Disallowed Entries Objection shall be held on **February 21, 2018 at 1:00 p.m.**, at the United States Bankruptcy Court, 900 Market Street, Courtroom No. 2, Philadelphia, Pennsylvania.

(E) Counsel for the Debtor shall serve a copy of this Order on all parties who may have an interest in the Disallowed Entries including, but not limited to, all counsel and corporations identified on the Disallowed Entries.

Dated: 1/25/18

  
MAGDELINE D. COLEMAN  
UNITED STATES BANKRUPTCY JUDGE

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